

PT 00-9

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

GARWIN FAMILY FOUNDATION)		
)	A.H. Docket #	98-PT-0076
Applicant)		
)	Docket #	98-39-7
v.)		
)	Parcel Index #	15-20-481-032-0040
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Ms. Kara L. Jones, attorney at law, appeared on behalf of the Garwin Family Foundation.

Synopsis:

The hearing in this matter was held at 2309 West Main Street, Marion, Illinois, on August 16, 1999, to determine whether or not Jackson County Parcel Index No.15-20-481-032-0040 qualified for exemption from real estate taxation for the 1998 assessment year.

Dr. Leo Garwin, President of the Garwin Family Foundation (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include: first, whether the applicant owned this parcel during the 1998 assessment year; secondly, whether the applicant is a charitable organization; thirdly, whether the applicant used 14% of this parcel and 14% of the house thereon for the

administrative office of the applicant; and lastly, whether the applicant held the remaining 86% of this parcel and the building thereon in trust for the use and benefit of Southern Illinois University (hereinafter referred to as "SIU") during the period July 15, 1998, through December 31, 1998. Following the submission of all of the evidence and a review of the record, it is determined that the applicant owned this parcel during the 1998 assessment year. It is also determined that the applicant is a charitable organization. It is further determined that the applicant used 14% of this parcel and 14% of the house thereon for the office of the applicant throughout the 1998 assessment year. Finally, it is determined that the applicant held the remaining 86% of this parcel and the house thereon in trust for the use and benefit of SIU during the period July 15, 1998, through December 31, 1998, when it was used as the residence of a visiting professor of law and medicine.

It is therefore determined that 14% of Jackson County Parcel Index No. 15-20-481-032-0040 and 14% of the house thereon qualified for exemption for 100% of the 1998 assessment year and 86% of the aforesaid parcel and house thereon qualified for exemption for 47% of the 1998 assessment year. It is also determined that 86% of Jackson County Parcel Index No. 15-20-481-032-0040 and 86% of the house thereon should remain on the tax rolls for 53% of the 1998 assessment year and be assessed to the applicant, the owner thereof.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that this parcel and the residence thereon were not in exempt use during the 1998 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 6A.

2. The applicant was incorporated as an Oklahoma not-for-profit corporation on August 19, 1993. (Appl. Ex. No. 2)

3. The purposes of the corporation, as set forth in its Certificate of Incorporation, read in part as follows:

The Corporation is formed exclusively for charitable, educational,

religious, literary, and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (referred to herein as the “Code”), or the corresponding provision of any future United States internal revenue law. (Appl. Ex. No. 2)

4. The Internal Revenue Service has determined that the applicant is a private foundation pursuant to section 509(a) of the Code and that gifts to the applicant are exempt from federal income tax pursuant to Code section 501(c)(3). (Appl. Ex. No. 3)

5. Since the time of incorporation the purposes of the applicant have been two fold. The first was to establish and fund at SIU the Arthur Grayson Memorial Distinguished Visiting Professorship of Law and Medicine (hereinafter referred to as the “Grayson Visiting Professorship”). The second was to establish and fund a pair of scholarships for students entering SIU in the joint fields of medicine and law. (Tr. pp. 11 & 12)

6. In late October 1994, the officers of the applicant entered into an agreement with SIU, the SIU law school, and the SIU medical school. Pursuant to that agreement applicant agreed to provide a portion of the annual salary for the Grayson Visiting Professor up to an annual maximum of \$50,000.00 per year. That agreement also provided that the applicant may provide free housing for the visiting professor. The initial term of this agreement was 5 years. (Appl. Ex. No. 8)

7. The Grayson Visiting Professor is required to teach courses, counsel students, write papers, and in so doing enhance the reputation of the SIU School of Law and School of Medicine. (Tr. p. 12)

8. The applicant acquired this parcel and the house thereon pursuant to a warranty deed dated August 17, 1994. (Dept Ex. No. 2B)

9. This house is located at 1102 West Chautauqua in Carbondale, Illinois. It is located directly behind the Southern Illinois University School of Law and is within walking distance of the law school and the law library. (Appl. Ex. No. 16)

10. The house is essentially a three-bedroom residence with an additional room with bath on the east side of the house. This room with bath has a separate entrance and contains 14% of

the square footage of the house. Since the house was acquired, this 14% of the house has been used as the office for the applicant. (Appl. Ex. No. 6)

11. The remaining 86% of the square footage of the house was purchased with the intention of using it as the residence for the Grayson Visiting Professor. (Tr. p.14)

12. The 86% residential portion of the house was occupied by law and medical students, Kimberly D. Doody and Rupali Gandhi, during the period January 1, 1998, through July 14, 1998. During the period July 15, 1998, through December 31, 1998, this 86% of the house was occupied by Marshall B. Kapp and his wife. During that time frame Marshall B. Kapp was the Grayson Visiting Professor. (Tr. pp. 20 & 24, Dept. Ex. No. 4)

13. The portion of the house occupied by Professor and Mrs. Kapp had been furnished by the applicant. This residence was provided to Professor Kapp at no cost to him. Professor Kapp paid the utilities on 86% of the house during the period when he occupied that portion. (Tr. pp. 17, 24, & 25, Appl. Ex. 16)

14. During the time that Professor Kapp occupied this residence he taught one course in the law school each semester. He was advisor to the health care moot court teams. Law and medical students came by this residence two or three times a week for discussions with Professor Kapp. Law and medical students were also invited to this residence for dinner. During the academic year Professor Kapp authored articles published in the Journal of Academic Medicine, the Journal of Legal Medicine, and the SIU School of Law Journal. (Appl. Ex. No. 16)

15. This residence provided Professor Kapp with an office where he could prepare for classes and seminars. The close proximity of this residence to the law school allowed Professor Kapp to conduct research and to have access to the school's computer system. The close proximity of the residence to the law school also assisted the professor in meeting with students at his residence. (Appl. Ex. No. 16)

16. The attorneys for the applicant submitted a statement in which they stated that the applicant was not requesting an exemption for the period of time when Rupali Gandhi and Kimberly D. Doody occupied 86% of the house. (Appl. Ex. No. 22)

17. I take Administrative Notice of the Department's decision in Docket No. 98-PT-0015 in which the Department determined that the 86% of the house located on the parcel here in issue did not qualify for exemption during the period August 15, 1997, through December 31, 1997. During that period said 86% of the house was occupied by Rupali Gandhi and Kimberly D. Doody. I also note that the applicant did not file for Administrative Review of that decision.

18. I also take Administrative Notice of the Department's decision in Docket No. 95-39-5 in which it was determined that the applicant is a charitable organization and that the 14% of the house on this parcel qualified for exemption since it was used as the office of the applicant.

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to this constitutional grant of authority, the General Assembly has enacted property tax exemption provisions. Concerning charitable organizations, 35 ILCS 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States. . . .

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v.

Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989); and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). It is therefore very clear that the burden of proof is on the applicant to establish that it is entitled to an exemption.

I conclude that the applicant owned Jackson County Parcel No. 15-20-481-032-0040 during the entire 1998 assessment year.

I take Administrative Notice of the decision of the Department in Docket No. 95-39-5 in which it was determined that the applicant is a charitable organization. In the case of Evangelical Hospital Association v. Novak, 125 Ill.App. 3d 439 (2nd Dist. 1984), the Court held that the administrative office of an exempt organization qualified for an exemption. I consequently conclude that 14% of the house on this parcel and also 14% of the parcel qualified for exemption from real estate taxation for the 1998 assessment year because it was used as the administrative office of the applicant, a charitable organization.

Concerning the exemption of schools, 35 **ILCS** 200/15-35 provides in part as follows:

All property donated by the United States for school purposes, and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt, whether owned by a resident or non-resident of the state or by a corporation incorporated in any state in the United States. Also exempt is:

(b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, including, but not limited to, student residence halls, dormitories and other housing facilities for students and their spouses and children, staff housing facilities,

The applicant, a charitable foundation, has as one of its purposes to help establish and fund the Grayson Visiting Professorship of Law and Medicine on the SIU campus in Carbondale. Pursuant to its written agreement with SIU, dated October 1994, the applicant is paying over to SIU an annual salary supplement of up to \$50,000.00 whenever there is a Grayson Visiting Professor on campus. In addition, the applicant purchased the parcel here in issue and the house thereon to serve the dual purpose of providing an administrative office for the applicant and also to provide a residence for the Grayson Visiting Professor while that person is on campus. The applicant, pursuant to its agreement with SIU, was holding its funds as well as the parcel here in issue and the residence thereon in trust for the use and benefit of SIU concerning the Grayson Visiting Professorship. Illinois Courts have held that property will qualify for exemption where it is held by an organization in trust for the use and benefit of an exempt organization. *See People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944). *See also Community Mental Health Council, Inc. v. Department of Revenue*, 186 Ill.App.3d 73 (1st Dist. 1989). I conclude that 86% of the residence on this parcel, during the period July 15, 1998, through December 31, 1998, was held in trust by the applicant for the use and benefit of SIU in obtaining eminent scholars for the Grayson Visiting Professorship.

The Grayson Visiting Professor is required to teach courses, interact with students, and write papers which are published in noted professional journals. The close proximity of this parcel to the law school and the law library facilitated Professor Kapp acting in the capacity of the Grayson Visiting Professor in performing his required duties. In addition this residence provided Professor Kapp with an office where he could prepare for his classes and seminars. Since this residence was within easy walking distance of the law school it assisted Professor Kapp in inviting law and medical students to the residence to discuss various law and medical related topics.

The applicant owned, maintained, and furnished this residence and made it available to the Grayson Visiting Professor. This made it easier for Professor Kapp to leave his home university for the one school year that he was employed as the Grayson Visiting Professor at

SIU.

In the case of MacMurray College v. Wright, 38 Ill.2d 272 (1967), the Supreme Court first determined that the exemption for staff housing which includes the same language as that found in 35 ILCS 200/15-35 was constitutional under Section 3 of Article IX of the Illinois Constitution of 1870, which authorizes the exemption of property used for school purposes. Article IX Section 6 of the Illinois Constitution of 1970 also authorizes the exemption of property for school purposes using similar language. The Court in MacMurray College v. Wright then proceeded to clarify the criteria for exempting “staff housing facilities” at page 278, as follows:

A party seeking tax exemption for staff housing facilities as property exclusively used for school purposes obviously must do more than merely show that the property is owned by the school and occupied by school personnel. There must be use exclusively for school purposes. However, one is not required to show that the use of the property is absolutely indispensable for carrying out the work of the institution. (*Knox College v. Board of Review*, 308 Ill. 160.) The primary use of the property, not its incidental uses, determines its tax exempt status. (*People ex rel. Kelly v. Avery Coonley School*, 12 Ill.2d 113.) Exemption will be sustained if it is established that the property is primarily used for purposes which are reasonably necessary for the accomplishment and fulfillment of the educational objectives, or efficient administration, of the particular institution.

During the aforesaid period of Professor Kapp’s occupancy said 86% of the parcel here in issue and the house thereon were used primarily for school purposes because it allowed Professor Kapp to interact with students and to prepare for classes and seminars.

I therefore conclude that the provision of 86% of this parcel and the house thereon to the Grayson Visiting Professor was reasonably necessary for the accomplishment and fulfillment of the educational objectives and the efficient administration of the combined law and medical curriculum at SIU.

I therefore recommend that 14% of Jackson County Parcel Index No. 15-20-481-032-0040 and 14% of the house thereon qualified for exemption for 100% of the 1998 assessment

year and 86% of the aforesaid parcel and house thereon qualified for exemption for 47% of the 1998 assessment year.

I also recommend that 86% of Jackson County Parcel Index No. 15-20-481-032-0040 and 86% of the house thereon remain on the tax rolls for 53% of the 1998 assessment year and be assessed to the Garwin Family Foundation, the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
March 30, 2000